



BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 070719377-2189-01]

RIN 0648-AV81

Confidentiality of Information; Magnuson-Stevens Fishery Conservation and Management
Reauthorization Act; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric
Administration (NOAA), Commerce.

ACTION: Proposed rule, extension of public comment period and correction.

SUMMARY: The National Marine Fisheries Service (NMFS) is further extending the date by which public comments are due concerning proposed regulations to revise existing regulations governing the confidentiality of information submitted in compliance with any requirement or regulation under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act or MSA). NMFS published the proposed rule on May 23, 2012 and announced that the public comment period would end on June 22, 2012. NMFS published a revision on June 13, 2012, extending the comment period to August 21, 2012. With this notice, NMFS is extending the comment period to October 21, 2012. Additionally, this action corrects Release of confidential information, in which the paragraphs were incorrectly numbered.

DATES: The deadline for receipt of comments on the proposed rule published on May 23, 2012 (77 FR 30486), and revised on June 13, 2012 (77 FR 35349), is extended to October 21, 2012.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA-NMFS-2012-0030, by any of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal www.regulations.gov. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, then enter NOAA-NMFS-2012-0030 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.
- Mail: Submit written comments to Karl Moline, NMFS, Fisheries Statistics Division F/ST1, Room 12441, 1315 East West Highway, Silver Spring, MD 20910.
- Fax (301)713-1875; Attn: Karl Moline

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Karl Moline at 301-427-8225.

SUPPLEMENTARY INFORMATION:

Background

On May 23, 2012, NMFS published a proposed rule at 77 FR 30486 that would revise existing regulations on the handling of information required to be maintained as confidential under the Magnuson-Stevens Act. The purposes of the proposed rule is to make both substantive and non-substantive changes necessary to comply with the MSA as amended by the 2006 Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA) and the 1996 Sustainable Fisheries Act (SFA). In addition, the rule proposes to address some significant issues that concern NMFS' application of the MSA confidentiality provision to requests for information.

NMFS received several requests from fishery management councils and representatives of fishing and environmental organizations to extend the comment period on the proposed rule in order to allow the councils and other organizations to review the proposed rule and solicit feedback from their members. NMFS published a revision on June 13, 2012 (77 FR 35349), extending the comment period to August 21, 2012.

NMFS has received requests to extend the comment period beyond August 21, 2012, in order to allow councils additional time to prepare comments. We have considered these requests and conclude that an additional 60-day extension is appropriate.

Need for Correction

Paragraph designations errors appear in the proposed rule published on May 23, 2012 (77 FR 30486), beginning on page 30495, in the third column which will likely confuse the public if not corrected. Through this action, NMFS corrects and republishes § 600.425 as follows:

§ 600.425 Release of confidential information.

(a) NMFS will not disclose to the public any confidential information except when:

(1) Authorized by an FMP or regulations under the authority of the North Pacific Council to allow disclosure of observer information to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification.

(2) Observer information is necessary in proceedings to adjudicate observer certifications.

(3) Confidential information is required to be submitted to the Secretary for any determination under a limited access program. This exception applies to confidential information that NMFS has used, or intends to use, for a regulatory determination under a limited access program. For the purposes of this exception:

(i) Limited Access Program means a program that allocates privileges, such as a portion of the total allowable catch, an amount of fishing effort, or a specific fishing area, to a person.

(ii) Determination means a grant, denial, or revocation of privileges; approval or denial of a transfer of privileges; or other similar regulatory determinations by NMFS applicable to a person.

(4) Required to comply with a federal court order. For purposes of this exception:

(i) Court means an institution of the judicial branch of the U.S. Federal government consisting of one or more judges who seek to adjudicate disputes and administer justice. Entities not in the judicial branch of the Federal government are not courts for purposes of this section.

(ii) Court order means any legal process which satisfies all of the following conditions:

(A) It is issued under the authority of a Federal court;

(B) A judge or magistrate judge of that court signs it; and

(C) It commands NMFS to disclose confidential information as defined under § 600.10.

(5) Necessary for enforcement of the Magnuson-Stevens Act, or any other statute administered by NOAA; or when necessary for enforcement of any State living marine resource laws, if that State has a Joint Enforcement Agreement that is in effect.

(6) The Secretary has obtained written authorization from the person submitting such information to release it to persons for reasons not otherwise provided for in Magnuson-Stevens Act subsection 402(b) and such release does not violate other requirements of the Act. NMFS will apply this exception as follows:

(i) When a permit-holder is required to submit information in compliance with requirements of the Act, the permit-holder or designee may execute the written authorization for release of that information. Otherwise, the person who is required to submit the information and is identified in that information as the submitter may execute the written authorization for that information.

(ii) For observer information, a permit-holder may execute a written authorization for release of observed catch, bycatch, incidental take data, economic data, recorded biological sample data, and other information collected for scientific and management purposes by an observer while carried aboard the permit-holder's vessel.

(iii) A permit-holder or designee or other person described under paragraph (a)(6)(i) of this section must provide a written statement authorizing the release of the information and specifying the person(s) to whom the information should be released.

(iv) A permit-holder or designee or other person described under paragraph (a)(6)(i) of this section must prove identity by a statement of identity consistent with 28 U.S.C. 1746, which permits statements to be made under penalty of perjury as a substitute for notarization. The statement of identity must be in the following form:

(A) If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".

(B) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)".

(v) The Secretary must determine that a release under paragraph (a)(6) of this section does not violate other requirements of the Magnuson-Stevens Act and other applicable laws.

(b) [Reserved]

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 et seq.

Dated: July 20, 2012

Alan D. Risenhoover,
Director, Office of Sustainable Fisheries,
performing the functions and duties of the
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

[FR Doc. 2012-18295 Filed 07/25/2012 at 8:45 am; Publication Date: 07/26/2012]